



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF OCTOBER 9, 2003**

CALL TO ORDER: Chairperson Cohen called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Cohen, Commissioners Harrison, Natarajan, Sharma, Thomas, Wieckowsk

ABSENT: Weaver

STAFF PRESENT: Kathleen Livermore, Senior Planner
Sandra Fox, Assistant City Attorney
Wayne Morris, Associate Planner
Andrew Russell, Associate Civil Engineer
Kunle Odumade, Associate Transportation Engineer
Michelle Yesney, EIR Consultant
Kathy Cote, Environmental Services Manager
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: None

CONSENT CALENDAR

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 3, 4, 6, AND 7.

IT WAS MOVED (HARRISON/THOMAS) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTIONS ON ITEM NUMBERS 3, 4, 6, AND 7.

ITEM 3. FREMONT HUB – 39170 Argonaut Way – (PLN2003-00315) - to consider a finding for site plan and architectural review for modifications involving a net expansion of approximately 31,000 square feet to the Fremont Hub in the Central Business District. This project is categorically exempt from CEQA review per section 15302, Replacement and Reconstruction Class 2. (Continued from September 25, 2003.)

HOLD PUBLIC HEARING;

AND

FIND THE PROJECT CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PER SECTION 15302, AS IT RELATES TO THE REPLACEMENT AND RECONSTRUCTION OF NEW STRUCTURES (CLASS 2);

AND

FIND PLN2003-00315 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED WITHIN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE DESIGNATIONS, GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN LAND USE CHAPTER AS ENUMERATED IN THE STAFF REPORT.

AND

APPROVE PLN2003-00315, AS SHOWN ON EXHIBIT "A", SUBJECT TO THE FINDINGS AND CONDITIONS ON EXHIBIT "B".

- ITEM 4. BACCARAT RAILROAD LLC – 41075 Railroad Avenue – (PLN2000-00059)** – to consider an appeal regarding the completeness of an application for a Preliminary Grading Plan and an Initial Study and to consider a Preliminary Grading Plan for a 15-acre site zoned I-L Light Industrial located in the Irvington Planning Area.

CONTINUE TO NOVEMBER 6, 2003.

- ITEM 6. UNION STREET CONDOMINIUMS – 3536 Union Street – (PLN2001-00312)** – to consider a Preliminary and Precise Planned District for eight condominiums on .54 acre located in the Irvington Planning Area. This project is categorically exempt from CEQA under Section 15332 In-Fill Development Projects.

CONTINUE TO NOVEMBER 6, 2003.

- ITEM 7. A PERFECT DAY – 39039 Paseo Padre Parkway- (PLN2003-00316)** - to consider a Finding for Site Plan and Architectural Review for new landscaping at the corner of Paseo Padre Pkwy and Capitol Ave (Finding added 9/17/03) at 39039 Paseo Padre Pkwy in the Central Planning District. This project is categorically exempt from CEQA per section 15301, Existing Facilities.

THE APPLICATION HAS BEEN WITHDRAWN. NO ACTION IS REQUIRED.

The motion carried by the following vote:

AYES:	6 – Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

PUBLIC HEARING ITEMS

- ITEM 1. DEVRY STUDENT DORM – Ardentech Court – (PLN2003-00309)** - to consider a Planned District Major Amendment for a new 83,996-square foot student dormitory located at Ardentech Court (adjacent to DeVry College Campus at 6600 Dumbarton Circle) in the Northern Plain Planning Area. A Mitigated Negative Declaration has been prepared for this project. (Continued from August 28 and September 25, 2003.)

Chairperson Cohen disclosed that he and **Commissioner Natarajan** had met with staff and the applicant regarding the design plans. He had also met a second time with staff and the applicant. The applicant was receptive to some of the suggestions made by the Commission Members, which resulted in substantial improvement in the design.

Steve Cienfuegos, project manager, introduced James Kho, President of DeVry College at this location, and Dennis Readler.

James Kho, President, DeVry University Fremont Campus, stated that some students lived in a dormitory in Hayward and this project would eliminate their commute. He asked for approval of the new design.

Mr. Cienfuegos passed out renderings to the Commissioners and displayed the same renderings that showed:

- Articulated pop-out areas on the building, which would create shadow.
- Canopies above the pop-outs with enhancements on each pop-out corner.
- A canopy above the entry.
- A horizontal line used to separate the third floor from the first two floors.
- travertine elements to wrap the columns.
- Enhanced arches above the parapet that would delineate the food service portion of the building and expansion joints similar to what was on the building.
- Green concept was addressed by using a lighter-colored roof, windows that would be operable and using recyclable carpet.

Mr. Cienfuegos continued with the Conditions to which he took exception:

- Item 6 – As suggested during the last hearing, they would like to add to the condition that the dorms would be open to all college students in the area and programs sponsored by the City could be held at the school when the school was not being used.
- Item 31 – Walkway was widened to 8 feet with raised concrete planters on each side and speed bumps were added on each side of the walkway where vehicles would cross it.

Commissioner Thomas asked if the “Z” jog in the walkway as it traversed around the corner of the building could be straightened, as she believed that students would walk straight across it, rather than walk along the jog.

Mr. Cienfuegos agreed that the walkway should be a “straight shot.”

Commissioner Natarajan asked if he objected to the enhanced paving that was a part of Condition 31.

Commissioner Harrison asked if he was asking for a change in Condition 31. He asked if the applicant would agree to programs that could be conducted at the school that might not be City sponsored.

Mr. Cienfuegos replied that they preferred to use asphalt rather than enhanced paving for the walkway, because of cost considerations. That money had been used for some of the enhancements added to the building. He agreed that it was appropriate for the school to consider any program, not necessarily City-sponsored programs, that might be held at the school. He agreed to lighting bollards along the walkway, but believed that they were unnecessary, as the walkway was already adequately lit.

Commissioner Natarajan thanked the architect for working with the City and improving the design and stated that the speaker had remarked that the design had been greatly improved. She suggested some element of entrance, such as a canopy or making the door larger, where the walkway entered the building, as this seemed to be the entry that the students would use the most. She noted that it was also next to a trash enclosure.

Mr. Cienfuegos replied that entry was a food service entry and not a student entry. Service doors were also on the north and west sides of the building.

Commissioner Natarajan asked where the student entry was located.

Mr. Cienfuegos answered that the main entry was at the front of the building with an entry at the back of the U. Security dictated encouraging the students to enter the building through the main entry, as who went in and out of the building was monitored.

Commissioner Natarajan noted that the food service entrance read as an entrance, as it was at the end of the walkway that connected the two buildings. She asked why the walkway then ended at that door, if it was not to be used by the students.

Mr. Cienfuegos pointed out that the walkway continued around the building and to the main entrance, which was the entrance that the students would be encouraged to use.

Commissioner Thomas clarified that the students would follow the walkway around the corner of the existing STI building (where the "Z" jog would be straightened) and walk on a direct path to a door that they would not be allowed to use. She asked why the path did not follow along the side of the parcel up to the front door or across the back to the back door, which made more sense.

Mr. Cienfuegos stated that the students would find their own way and currently walked across the parking lot.

Commissioner Thomas asked why money was being spent to develop a path that no one would use. The walkway should be moved.

Mr. Cienfuegos stated that a canopy could be put over that food service door and the students could be allowed to use that door at the end of the walkway.

Chairperson Cohen suggested that this issue could be worked out with staff, in light of the comments made by the Commissioners.

Commissioner Natarajan suggested that the sparsely used brackets be repeated elsewhere to provide additional rhythm, at least where the roof had been raised. She asked if paving or something other than the planned speed bumps could be used to slow down vehicles when driving over the walkway.

Mr. Cienfuegos agreed that paving would look much nicer, but it was more costly than installing speed bumps at the same time that the parking lot was repaved. He suggested using dots instead of the speed bumps.

Commissioner Natarajan liked the dots and stated that anything other than speed bumps would be better.

Commissioner Sharma stated that, in his opinion, Item No. 6 would not have to be reworded. It clearly stated that the building could not be rented to the general public, except when it was for education or other purposes.

Mr. Cienfuegos read, "Housing services may only be rented to those students validly enrolled at the facility" and stated that the school would like to rent dormitory rooms to any nearby college students, such as students at Berkeley.

Chairperson Cohen opened the public hearing.

Mr. Cienfuegos closed by thanking the City for working with them regarding the design revisions and asked for approval, as they hoped to have the dormitories available for the 2004 school year.

Chairperson Cohen closed the public hearing.

Commissioner Thomas complimented the applicant for the wonderful redesign job. By utilizing the suggestions made by the Commissioners, she expected that the project would be "as close to perfect as it could get."

Commissioner Natarajan again thanked the applicant for working with the Commission and the Planning Department. She asked that he speak to the City Council and describe to them how the redesign process had taken place.

Chairperson Cohen stated that her request was important, as the Planning Commission had worked with the applicant to improve the original design and make their project superior. By and large, the applicant had what it wanted, along with a project that was going to stand out, the first in the nation.

IT WAS MOVED (HARRISON/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE 6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

MODIFY CONDITION NO. 6 TO ALLOW NON-DEVRY STUDENTS TO LIVE IN THE DORMITORIES AND TO INCLUDE THE COMMUNITY BY ALLOWING EDUCATIONAL SEMINARS TO BE HELD ON CAMPUS;

AND

WORK WITH STAFF CONCERNING CONDITION 31 BY CREATING SOME VEHICLE SLOWING DEVICE OTHER THAN SPEED BUMPS ON EITHER SIDE OF THE WALKWAY, ELIMINATE "Z" JOG IN WALKWAY, AND DEFINE ENTRANCE AT THE END OF WALKWAY;

AND

DELETE CONDITIONS 25 THROUGH 29, AS THE NEW DESIGN COMPLIED WITH THOSE CONDITIONS;

AND

FIND THE INITIAL STUDY CONDUCTED FOR PLN2003-00309 HAS EVALUATED THE POTENTIAL IMPACTS FOR THIS PROJECT THAT WOULD CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES, AND FIND THAT THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

ADOPT DRAFT MITIGATED NEGATIVE DECLARATION PREPARED FOR THE PROJECT AND FIND THAT IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT, AND FIND THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

APPROVE MITIGATION MONITORING PLAN FOR THE PROJECT;

AND

FIND PLN2003-00309 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S PUBLIC FACILITIES CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

APPROVE PLN2003-00309, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES:	6 – Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

ITEM 2. NILES GROVE – 35601 Niles Boulevard – (PLN2003-00287) - to consider a Zoning Administrator referral of a Zoning Administrator Permit to allow the development of three detached single family (Dwelling Group) dwellings in the Niles Planning Area. A Mitigated Negative Declaration has been prepared for this project. (Continued from September 25, 2003.)

Commissioner Natarajan asked if this item was before the Commission for land use or was it for site planning and architecture.

Associate Planner Morris replied that it was to be heard by the Commission for land use.

Chairperson Cohen asked if the architecture was within the realm of the Commission's discretion.

Associate Planner Morris stated that it was a land use issue and that the site plan and architecture was within staff's purview because it involved a Zoning Administration Permit.

Commissioner Natarajan stated that this project was subject to the planning and architectural review by the Commission according to the third page of the initial study. She asked if the shaded area that represented the project site and included the church property and the ACWD property was correct, as shown on page 7 of the staff report.

Associate Planner Morris stated that comment noted in the initial study was standard and should have been deleted from this initial study. He stated that the shaded areas were not correct. The different properties were identified at the top of the zoning exhibit, with the Niles Grove property being in the middle.

Bob Wedemeyer, Clear Creek Services Board member, stated that Clear Creek Services came into being when parents of developmentally disabled children bought the former Ohlone College campus site in 1974, of which his parents were a part. That facility, called Serra Center, provided home for these and other developmentally disabled children until 1992 when the property was then sold and the former children were scattered throughout the City of Fremont. Those same residents were still scattered and had been often forced to relocate as apartments changed management, rental policies changed and group homes were shut down. Lack of continuity was enormously stressful to these adults now in their late 40s and 50s. This project would be built to the standards of an intermediate care facility/developmentally disabled nursing (ICF/DDN) home, which would allow the adults to reside in perpetuity without having to move as their physical and health needs changed. The project would initially be licensed as an ICF/DDH (developmentally disabled habilitative) home. Each of these homes would look like typical homes serving six residents. This project was fully funded and it was hoped that it would be a model for many others.

Kurt Hereld, architect, stated that the site had a stand of redwoods in the middle of it, which allowed for automobiles to enter the site, circle around the trees and exit. The three homes would have views to the redwood grove, which would have a patio area to provide a place for socializing. He displayed a rendering showing the houses with cultured stone veneers, hip roofs and linked by a sidewalk.

Commissioner Sharma asked if this facility was exclusively for adults. He asked how the clients were found and chosen for this facility.

Mr. Wedemeyer replied that many of the current clients were the original children who had lived at Serra Center until 1992, and they were now middle-aged adults.

Commissioner Natarajan asked where the sound walls would be located and the length of the sound wall along Niles Boulevard.

Mr. Wedemeyer replied that the sound and vibration analysis suggested a sound wall along the railroad tracks, partly along the back of the property and partly along the front of the property. Subsequently, the two neighboring property owners had agreed to allow a sound wall along the railroad tracks in a straight line to avoid walling in the property. The eight-foot sound wall was to be located at the foot of the embankment where Niles Boulevard was elevated across the railroad tracks and where there was an overpass wall already there.

Don Anderson, founding pastor of First Christian Church of Fremont, stated that Serra Center was originally purchased from the Catholic Church by the National Benevolent Association, which was a branch of the Christian Church. He had served on the original Serra Center Board and had spent every Monday night for over 20 years at Serra Center. In 1992, the National Benevolent Association sold the property, which caused the residents to be distributed within the community. His church had always been connected to the Serra Center and it was the church's property on which this new facility was to be built. He believed that the residents and the church would minister to each other, as had occurred since Serra Center opened in 1975. He asked for approval of this project.

Commissioner Thomas asked if, as openings occurred, it was planned to bring in new people who could expect to live here for perpetuity.

Mr. Anderson replied that the project was seen as providing a continuing, perpetual service. The contract with the First Christian Church made certain that the facility could not be used for any other type of residence.

Chairperson Cohen clarified that the use of the facility was before the Commission rather than who would be using it.

Chairperson Cohen opened the public hearing.

Ann McMeans stated that she owned property across the street from the proposed facility. She understood that six family members were to be housed in the new project, which left room for 12 other people. She also understood that approximately \$5,000 per month would be paid to the facility manager for each client residing in the facility, which made this project seem to be more of a business proposition rather than three single-family homes. Nursing facilities were mandated to have wider than usual hallways, specially equipped bathrooms and fire department regulations had to be met. She was opposed to a "business, nursing facility" rather than a residential development going in across the street from her. ICF facilities did not fall under the Omestead Act, so it could be more institutional or nursing home-like, rather than like small, family homes that were integrated into the community.

Commissioner Sharma asked if her issue with this facility was that six unrelated people would be living in each home. He asked if the street was divided and how wide the street was in front of her house. He asked her opinion of churches being allowed to locate within residential areas and if she felt that the church was making a mistake by allowing its property to be used for such a facility. He believed this was a very charitable and noble enterprise. He suggested that someone speaking for the project would be able to address her questions later in the hearing.

Ms. McMeans replied that the road was wide at her house. Her understanding was that this property was zoned for residential and these houses would not be residential. Churches were not directly connected to residential facilities that cared for people who could not care for themselves. She believed that the church had made a mistake, and she disagreed with changing the zoning to accommodate this project. She recognized that nursing facilities were needed, but she felt that this was the wrong location for this facility.

John Clay, President of Clear Creek Services, stated that his organization was made up of community members and family members of the developmentally disabled and they were not interested in creating a business. Over ten years had been spent planning for this project that would be good for both the community and the developmentally disabled residents. It was true that each resident received approximately \$4,000 per month, but that money went for staffing and care. An endowment was being planned to ensure that, if the projected costs were more than what each resident received, the difference would be covered. These residences were planned to be an improvement for both the residents and the neighborhood. Because the idea was to allow the residents to stay in these homes as they aged in place, the halls and the bathrooms were enlarged to accommodate this expectation. Anxiety and nervousness associated with moving was something normal people were able to handle. However, a developmentally disabled person found moving to be a very traumatic experience. It was hoped that these three residential homes would allow the same kinds of friendships that had been formed at Serra Center. This property was not in the middle of residential homes. The Alameda County Water District, the quarry lakes, the church and Alvarado-Niles Boulevard bordered this property. It was possible that this project would obtain State or perhaps national recognition, because it was a unique project that would allow aging in place for each resident.

Commissioner Natarajan asked how many people would live in each house and if siblings would be living together.

Mr. Clay replied that each house would have six residents in six separate bedrooms, which was unique, as most developmentally disabled people had to share a bedroom when living in a house. He had two developmentally disabled sisters who would be living together.

Commissioner Sharma asked if all licensing regulations would be adhered to with regard to kitchens, halls and bathrooms.

Mr. Clay confirmed that all licensing regulations would be adhered to and said that it was hoped that this would be a model facility that the City would be proud of.

Chairperson Cohen closed the public hearing.

Commissioner Natarajan asked if the sound wall along Niles Boulevard was required because of the noise study.

Associate Planner Morris stated that the noise study did require a sound wall along Niles Boulevard, along with the bridge overpass wall. A wall was also required between Building 3 and the water district property.

Commissioner Natarajan asked if Building 3 were pulled back, would the sound wall be required. She noted that this Commission and the City had worked to eliminate sound walls and, in her opinion, a sound wall at the gateway to the City was not appropriate. She encouraged other ways to mitigate the noise from Niles Boulevard.

Associate Planner Morris replied that the noise and traffic from Niles Boulevard and the noise and vibration from the railway required the sound walls.

Chairperson Cohen recalled that other kinds of mitigation were done on Mission Boulevard and King Avenue in award winning fashion.

Associate Civil Engineer Russell replied that if the building was moved, the sound study would probably change.

Commissioner Natarajan asked if the Commission approved this land use, would it go back to the Zoning Administrator for site plan and architectural review.

Associate Planner Morris stated that site planning architecture would go through the DO process.

Senior Planner Livermore stated that the land use entitlement was under the Zoning Administrative permit, but the site plan and architectural review was handled at the DO level.

Commissioner Natarajan offered site plan and architectural suggestions to be considered during the DO.

- Storage was appropriate tucked away in the back.
- Trash enclosure should not be at the back of the site, which would entail the truck driving through the area to pick up the trash. It made more sense to locate it closer to Niles Boulevard.
- Handicapped parking stalls should be located near the interior parking spaces rather than close to Niles Boulevard.
- Building 3 should have more detailing at the rear that faced Niles Boulevard.

Senior Planner Livermore asked if Commissioner Natarajan was requesting that staff work with the applicant and the environmental consultant to ascertain if there was a different way to mitigate the noise other than with a sound wall along Niles Boulevard.

Commissioner Natarajan replied that she was.

Commissioner Thomas agreed that Building 3 could be moved further away and flip-flopped with the parking. She agreed that the trash enclosure should be “somewhere more logical.” The portion of the site behind the redwood grove needed more work.

Chairperson Cohen agreed.

Commissioner Sharma could see that there was a lot of passion and dedication involved with this project. It was a good project, the location was ideal, and he would like to see more facilities like it created within the City. He would support it.

Commissioner Harrison commended the speakers for their passion for this group of people. He would support staff recommendation.

Commissioner Wieckowski stated that he hoped that other synagogues, churches and mosques would look at their excess properties and consider providing for the “needy, the neglected and the homeless in our community.”

Commissioner Thomas stated that she knew people who had worked at Serra Center and was aware of what the families went through ten years ago. It was a wonderful idea for the church to step forward to provide a place to start over afresh.

IT WAS MOVED (HARRISON/WIECKOWSKI) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

WORK WITH STAFF TO RELOCATE THE TRASH ENCLOSURE AND ELIMINATE THE SOUND WALL ALONG NILES BOULEVARD;

AND

FIND THE INITIAL STUDY CONDUCTED FOR PLN2003-00287 HAS EVALUATED THE POTENTIAL IMPACTS FOR THIS PROJECT THAT WOULD CAUSE AN ADVERSE EFFECT – EITHER INDIVIDUALLY OR CUMULATIVELY ON WILDLIFE RESOURCES,

AND FIND THAT THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION PREPARED FOR THE PROJECT AND FIND THAT IT REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT, AND FIND THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT;

AND

APPROVE THE MITIGATION MONITORING PLAN FOR THIS PROJECT;

AND

FIND PLN2003-00287 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THAT A PARKING REDUCTION AND NUMBER OF COVERED SPACES AS OUTLINED IN THE STAFF REPORT IS APPROPRIATE FOR THIS DEVELOPMENT;

AND

FIND THAT THE REDUCTION IN THE PARKING STRUCTURE (CARPORT) SETBACK FROM 10 FEET TO 7 FEET IS APPROPRIATE FOR THIS DEVELOPMENT;

AND

APPROVE PLN2003-00287, AS SHOWN ON EXHIBIT "A", SUBJECT TO THE FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES: 6 – Cohen, Harrison, Natarajan, Sharma, Thomas, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 – Weaver

RECUSE: 0

Chairperson Cohen called for a recess at 8:30 p.m.

Chairperson Cohen called the meeting back to order at 8:40 p.m.

ITEM 5. FREMONT RECYCLING & TRANSFER STATION – 41149 Boyce Road (PLN2002-00150, PLN2002-00270, PLN2003-00270) - to consider a Conditional Use Permit and Environmental Impact Report (SCH# 2001122003) for Fremont Recycling & Transfer Station located in the Industrial Planning Area. A General Plan Amendment (text revisions) regarding the City of Fremont Waste Management System is also included. An Environmental Impact Report for the Revisions to the City of Fremont Waste Management System was prepared and circulated for this project.

Senior Planner Livermore noted changes that included four additional conditions with Condition 62a to be deleted. She introduced Kunle Odumade, Senior Transportation Engineer, and Michelle Yesney, EIR Consultant and Principal with David J. Powers and Associates, who would make the presentation.

Commissioner Wieckowski recused himself because he was the Chairperson for the Tri-City Ecology Center and a letter that he had authored was included in the Draft Environmental Impact Report.

Commissioner Harrison disclosed that he went with City of Fremont staff to the BLT facility in Sacramento, as did Commissioner Wieckowski, Commissioner Thomas and Commissioner Sharma,

Commissioner Sharma stated that the field trip was to provide hands-on experience and to learn the practicality of such a facility that was to be located within the City.

Michelle Yesney, EIR Consultant, stated that a letter had been received from attorneys representing the City of Newark that commented on the Final EIR, copies of which the Commission had. All issues raised in the letter had been adequately addressed in the Final EIR. She quoted from CEQA, Section 15151, "It does not require technical perfection in an EIR, but rather adequacy, completeness and a good-faith effort at full disclosure" that was based upon current information. The facility would eventually accept all of the municipal solid waste generated within the City, as well as separated recyclables. It might also accept municipal solid waste and recyclables generated within the cities of Union City and Newark. The municipal solid waste that was not separated for recycling would be loaded onto trucks and transferred to one of two existing sanitary landfills in Alameda County or San Joaquin County. She stated that Mark Spencer, Traffic Engineer, was also present to answer questions.

Commissioner Sharma asked if present landfill was near the proposed facility.

Ms. Yesney replied that the new facility would be very near the existing landfill. Traffic currently filters through the existing City street system, as trash comes from the tri-cities area. Much of the current traffic arrives at the landfill by way of Cherry and Boyce Road, by way of Stevenson Boulevard and Boyce Road and along Auto Mall Parkway.

Commissioner Sharma asked why certain roads could not be used for waste being hauled to the proposed facility, because the destination would be essentially the same as it was at the present time.

Ms. Yesney stated that the only conditions that related to specific routes had to do with new trucks that were not presently on the road. The trucks transferring waste to the out-of-City landfill would be directed to travel down Auto Mall Parkway to the freeway as a way to minimize impact to Stevenson Boulevard residents in the City of Newark.

Senior Planner Livermore stated that she was correct.

Shawn Guttersen, project manager for BLT Enterprises, introduced Dan Bianco, principal architect.

Dan Bianco, architect, stated that the upgrades for the forty year old facility included a limited expansion of the existing building area, retrofitting the existing building structure, updating the façade, improving the existing landscaping along with other site improvements. Architectural elements would be added and the buildings would be repainted and recladded. He displayed renderings that showed the proposed improvements.

Chairperson Cohen opened the public hearing.

Fred Osborne, City of Livermore Planner, read a letter of opposition from the City of Livermore, which included:

- Environmental impacts, such as noise and litter, from traffic created by transfer trucks traveling along I-580 to either landfill was not adequately analyzed in the Final EIR.
- Air quality, such as diesel emission impacts, from traffic created by transfer trucks traveling along I-580 to either landfill was not adequately analyzed in the Final EIR.

Mr. Osborne distributed copies of his letter to the Commissioners.

Mark Stump, attorney representing the City of Newark, stated that the City of Newark was against any construction of a facility on Boyce Road. He pointed out that this “was a garbage transfer station and it was going to be smelly” and it would be located one-third mile from the nearest residential development in the City of Newark. No quantitative analysis had been performed to address how the applicant planned to deal with the issue of “smelly garbage” being processed at this facility. A history of a lack of problems at a similar facility in Sacramento did not guarantee that those problems would not occur at this one. He stated that the applicant had declined to state that there were no problem odors that had been released from the Sacramento facility. No odor measurements had been taken in the areas surrounding the Sacramento facility, and he did not believe technology should be counted on to contain odors. He also noted that a secondary power source was not planned for this facility should a power outage occur. He complained that the City of Newark had not received the staff report until Monday, October 6th. He questioned the permitted use under the current zoning ordinance for this location, the findings as stated in the staff report, and Condition 27 regarding odor control. He recommended that a Conditional Use Permit should not be approved at this time.

Commissioner Thomas asked if the speaker or any of his staff had visited the facility in Sacramento, such as someone who was involved with the processing and hauling of trash.

Mr. Stump replied that Jim Reese, Assistant City Manager for the City of Newark, had been to the facility. Mr. Stump had viewed it only from outside the building.

Commissioner Sharma asked what feedback was received after the visits.

Mr. Stump replied that he saw only the outside of the facility on June 7th, a Saturday. It was a fairly warm day, about 85 degrees, and the facility did not seem to be in operation, as he saw few trucks going in and out. He did not smell any problem odors. However, he asked about odors when visiting a local mini market and was told that sometimes odors could be detected.

Commissioner Sharma deduced that if he could not detect any odors, then all the waste must have been taken care of on Friday.

Mr. Stump did not feel that any conclusions could be drawn from one visit late on a Saturday afternoon. A survey of the neighborhood should have been taken.

Commissioner Thomas added that she was aware of odor problems in the City of Milpitas that had not been addressed because they could be coming from various sites. She wondered if the odor attested to at the mini mart could have come from somewhere else in the area. She asked what the City of Newark staff person reported after his visit to the Sacramento facility.

Mr. Stump replied that because of attorney-client privilege, he had nothing to report.

Commissioner Thomas asked if he could report what his employees had observed when they visited the Sacramento facility. She asked if Mr. Reese could describe his impressions of the Sacramento Facility, since most of the Commissioners had also toured the facility.

Mr. Stump stated that he was the only one from his firm to visit the facility in Sacramento and that Mr. Reese could speak regarding his impressions of the facility. He asked if any of the Commissioners had smelled problem odors outside the facility during their tour.

Commissioner Thomas stated that she had not smelled anything outside the facility.

Commissioner Sharma stated that he had not smelled odors outside the facility. Even inside, expected odors were not present.

Chairperson Cohen asked if Mr. Reese would like to speak before the Commission.

Commissioner Harrison asked if it was wrong for the Commissioners to use their own experience at the site to make a decision, and he asked which was more accurate, a staff report or actually being at the site.

Mr. Stump replied that he would like to answer any other questions before Mr. Reese spoke of his experience. The fact that the Commissioners were using their own experiences as part of their decision-making should be publicly stated, but was acceptable.

Commissioner Harrison replied that had been disclosed at the beginning of this hearing. He asked if the speaker had noticed whether nearby businesses were thriving or if there were buildings with boarded up windows. He asked if he had noticed the high tech facility across the street.

Mr. Stump noticed that there was a former armory across the street and some vacant nearby sites. He believed that the high tech facility was on the former army base.

Chairperson Cohen observed that the Commission had just engaged in a grueling cross-examination in a technically proficient manner.

Jim Reese, City of Newark, stated that his impressions of the facility in Sacramento were that it was attractive for a garbage facility, the in and out of the refuse and recyclables was very organized, odor was recognizable inside and outside. He believed that the wind in the Bay Area would cause any odor created by the facility to be blown to nearby residential areas.

Commissioner Thomas asked if negotiating with the waste companies was his job. In other words, "Who's the garbage person in the City of Newark and why didn't they go on the tour?"

Mr. Reese replied that Dennis Jones would have accompanied him to the facility except that he had a family emergency. He went because he had negotiated the contracts in the past and had been involved with garbage and recycling for approximately 15 years.

Commissioner Sharma asked what Newark's experience was at this time with the current landfill.

Mr. Reese replied that the exposed landfill did smell.

Commissioner Sharma asked if the creation of this indoor facility would cause the odor to be worse when this landfill was eventually closed.

Mr. Reese pointed out that the new facility would be significantly closer to the City of Newark than the landfill was and it would be closer than the other location on Boscell Road that had been considered.

Commissioner Sharma agreed that there was some odor inside the Sacramento facility. However, one could detect odor from a fast food restaurant. He asked, from Mr. Reese's experience when visiting the Sacramento facility, if the odor was intolerable.

Mr. Reese stated that he had detected a very unpleasant odor. This area was the densest location in the City of Newark. The City did not feel that the potential odor had been adequately addressed.

Commissioner Natarajan noted that the zoning across from the Newark residences was industrial, which would allow any industrial use that could produce even more odor and noise issues than this facility might create.

Mr. Reese replied that this use should not be permitted in this district. It seemed fair to assume that something like this use would not be allowed to occur in this location.

Commissioner Harrison asked if the heat in Sacramento could be greater causing worse odors than what could be carried by the wind in this area.

Mr. Reese replied that he could be correct, but the documentation did not conclude that.

Commissioner Sharma stated that no one would know the answer to what kind of odors would be produced by this facility until it was actually built and operated for a time.

Mr. Reese did not feel this document did enough to anticipate or explain what could possibly happen.

Commissioner Thomas asked the applicant if the general practice was that empty trucks were washed at the facility. In other words, was it necessary to have a condition that did not allow an empty truck to be parked at the facility? She asked what the outbound trucks were like.

Mr. Guttersen stated that the trucks were washed in the wash bay at regular intervals and parked on site. If the truck looked dirty, it was washed. The trailers were made of heavy shiny, aluminum and covered with a heavy tarp that was rolled across the top of the trailer. One could not tell if the trailer was loaded or empty.

Commissioner Sharma asked if the tarp was similar to the sliding covers one saw on swimming pools.

Mr. Guttersen agreed that the tarp cover was very similar to those used over swimming pools. He passed a photo showing how the transfer vehicles looked. His replies to various comments made by previous speakers were:

- The facility in Sacramento was open on Saturdays from 8:00 a.m. to 5:00 p.m., in full operation and usually transferred approximately 40 percent of the normal weekday intake of waste.
- Each of the four facilities in the state received a monthly inspection by regulators, which usually took approximately two hours. This facility would also be inspected on a monthly basis.
- No notice of violation for odor had been received by any of the facilities. However, one complaint had been received in Sacramento since it had opened after several days of 100+ degree weather. The day that the City of Newark staff person visited the Sacramento facility, a luncheon was held in the visitor's education room and no odor complaints were received on that day.

Commissioner Harrison thought that he had seen a generator at the Sacramento facility. He asked why a back-up generator was not planned for the Fremont facility. He asked how the handful of complaints concerning the four facilities in the state were handled.

Mr. Guttersen stated that a back-up generator would be part of the design to allow 24/7 operation of computers, scales and lighting. Most of the time, the neighbors called the facility first. Some people called the local enforcement agency, others called the air district. A representative would be immediately sent out to identify the source of the odor. In Sacramento, across from the facility was an open and operating landfill that could have been the source of the odor the mini mart employee had detected. He promised to check with the mini mart concerning their assertion of odors. Material was rapidly moved and the facility was cleared out and swept every day to control odors.

Commissioner Harrison stated that his tour group had observed transfer trucks being loaded and the facility had been fully operational during the day they were there.

Chairperson Cohen closed the public hearing.

Commissioner Harrison asked if this would be a permitted use under our ordinance in that location.

Senior Planner Livermore replied that there were three definitions in the code under which the TS/MRF was addressed:

- Sanitary Services, which was a Zoning Administrator permit and most closely described what the facility would be doing.
- Motor Freight Transportation Warehousing, which involved the trucks going to and fro at the site and was a permitted use in this district.
- Wholesale Trade of Scrap and Waste Materials, which involved the recycling of reusable materials and required a use permit.

Senior Planner Livermore stated that the most conservative interpretation of the code was used and a use permit was required. She further noted that the staff report was picked up by a carrier of the City of Newark as soon as it was available on October 6th. The General Plan Text Amendment had not been included, but she gave them a copy tonight.

Commissioner Sharma asked how the City of Livermore would be affected by the transfer trucks traveling to waste sites along I-580.

Ms. Yesney stated there was no restriction on the time when trucks hauled waste to the landfills. The EIR assumed that trucks would travel around the clock. All of the impacts that included trucks traveling from the tri-cities area to the Altamont landfill had been fully addressed in the Final EIR that was prepared and certified for the Altamont landfill. The analysis for the Stockton landfill EIR was supplemented in this EIR.

Commissioner Natarajan asked if there was fuel dispensing on the site. She wondered if it would be more than just a tank.

Senior Planner Livermore replied that it was on the northwest corner on the west side.

Chairperson Cohen opened the public hearing to allow the applicant to answer Commissioner Natarajan's question.

Mr. Guttersen stated that there would be a 10,000-gallon fuel tank with a dispenser and pump to fuel the trucks.

Chairperson Cohen closed the public hearing.

Commissioner Harrison asked who would make the decision as to which landfill the nonrecyclable materials would be transferred.

Kathy Cote, Environmental Services Manager, stated that the decision would be brought before the City Council, tentatively scheduled for December 2nd. Proposals from both landfills had been received and were in the process of being evaluated.

Chairperson Cohen asked if staff had anything else to add.

Ms. Yesney added that projected diesel emissions were calculated at the worst location in the City on Auto Mall Parkway where all of the transfer trucks would pass by. The assumption was that one person would be 25 feet from the pavement for 70 years. The study concluded his exposure would not exceed the threshold of significance for exposure to diesel toxics. All other sensitive receptors would be substantially less than the assumptions made for that location. It was typical in EIRs to distinguish between project impacts and cumulative impacts that might occur in some possible scenario in the future and this distinction did not mean that the EIR was inconsistent. Noise and litter contributions from transfer trucks were not identified as being significant. While there had not been regular visits to neighbors bordering the Sacramento facility site, six visits had been made to the facility at different times and problem odors had not been identified outside or even at the boundary of the facility. She admitted that she had detected odors inside the facility, but none outside. "Getting a whiff of something did not mean that it was a problem odor."

Commissioner Harrison asked if the additional Condition 27 concerning misters was required by staff or did the applicant request it. He recalled that during the tour they were told that misters were specifically not used. He asked if recommendation of the CUP was part of the recommended action.

Senior Planner Livermore stated that the misters would be used if they needed it. She clarified that the applicant was comfortable with all the conditions. Recommending the certification of the EIR came first; next would be recommending approval of the CUP; and finally, recommending the General Plan Text Amendments.

Commissioner Sharma asked if the openings of the building were planned to accommodate the wind direction.

Senior Planner Livermore replied that she believed there would be only one opening.

Mr. Guttersen, applicant, stated that the wind was considered when planning the building and the transfer tunnel on the site, so that any odor from transfer material would blow inside the tunnel.

Commissioner Thomas understood the City of Newark concerns, as she sometimes noticed odors from the wastewater treatment plant in Union City or from Cargill Salt. The odors were very minimal, they were noticed very rarely and they were produced while servicing her water, which was a small price to pay for this service. This facility was the best alternative for handling the City's trash. She expected, down the road, that the City would be very glad to have this facility, along with the City of Newark as it would eventually be using it, also. She would support the project.

Commissioner Sharma stated that this facility would be as close to the City of Fremont as it would be to the City of Newark. No one could guarantee that odors would not be noticeable 100 percent of the time. He believed that this facility would be run as well as the Sacramento facility, which had little odor. He would support the project.

Commissioner Natarajan stated that she was comfortable with supporting this project, given the set of conditions. She asked that the newly constructed addition use recycled materials in its construction. The signage could be a little more creative. The aggregate panels were

attractive, and she encouraged the applicant to find some way to incorporate some of them into the façade.

Commissioner Harrison stated that he had been very skeptical of the promises that had been made about the odors as the tour traveled to the Sacramento facility. When they arrived, he admitted that they were right. He smelled nothing on the outside and the inside smelled like when he took out his own garbage. He welcomed BLT to the City of Fremont.

IT WAS MOVED (HARRISON/THOMAS) AND CARRIED BY THE FOLLOWING VOTE (5-0-1-0-1) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

WORK WITH STAFF TO IMPROVE SIGNAGE;

AND

ATTEMPT TO USE RECYCLEABLE MATERIALS IN THE CONSTRUCTION OF THE ADDITION;

AND

RECOMMEND CERTIFICATION OF THE FINAL ENVIRONMENTAL IMPACT REPORT (SCH# 2001122003, PLN2002-00150);

AND

RECOMMEND THAT PLN2002-00270 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S PUBLIC FACILITIES CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;

AND

RECOMMEND APPROVAL OF PLN2002-00270, AS SHOWN ON STAFF ANNOTATED EXHIBIT "A", SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B" AND AS AMENDED IN THE GOLD SHEET;

AND

RECOMMEND APPROVAL OF THE PROPOSED GENERAL PLAN TEXT AMENDMENTS (PLN2003-00270) REGARDING THE CITY OF FREMONT WASTE MANAGEMENT SYSTEM, AS SHOWN ON EXHIBIT "C";

The motion carried by the following vote:

AYES:	5– Cohen, Harrison, Natarajan, Sharma, Thomas
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	1 – Wieckowski

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Senior Planner Livermore stated that agenda items had been consolidated, and the October 23rd meeting was cancelled. The next meeting would occur on November 6th.

- Information from Commission: Commission members may report on matters of interest.

Chairperson Cohen stated that Commissioner Wieckowski had requested that the next meeting's agenda include a discussion of the implications by the City in taking the Big Box ordinance off the calendar and it not being considered.

Commissioner Thomas announced that she would be absent from the next meeting on November 6th.

Commissioner Natarajan asked if staff could give a brief overview of the discussion that ensued during the City Council's meeting.

Senior Planner Livermore stated that she had not attended the meeting. She promised to ask the City Attorney who had attended to advise the Planning Commission on the appropriateness of agendizing that item.

Chairperson Cohen stated that it should be put on the agenda, as the Commission was entitled to discuss it and the City Attorney could advise the Commissioners at that meeting.

Commissioner Harrison asked if that item was to be agendized to allow discussion of the issue and not the ordinance, itself.

Chairperson Cohen stated that he and Commissioner Wieckowski wanted to discuss the implications of taking the Big Box Ordinance off of consideration with their fellow Commissioners without violating the Brown Act.

Commissioner Natarajan opined that the Argus article was completely irresponsible.

Senior Planner Livermore agreed to agendize a discussion of the issue.

Commissioner Natarajan reported that she had passed her citizenship interview, then found that her file had been lost.

Commissioner Sharma declared that things like that had happened in 1980 and things were still the same twenty years later.

Meeting adjourned at 10:20 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Kathleen Livermore, Acting Secretary
Planning Commission